



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2016-0270; FRL-9949-34-Region 3]**

**Finding of Failure to Submit a State Implementation Plan; Maryland; Interstate Transport Requirements for the 2008 8-Hour National Ambient Air Quality Standards for Ozone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action finding that Maryland has failed to submit an infrastructure state implementation plan (SIP) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2008 8-hour ozone national ambient air quality standard (NAAQS). Specifically, these requirements pertain to the obligation to prohibit emissions which significantly contribute to nonattainment, or interfere with maintenance, of the 2008 8-hour ozone NAAQS in other states. This finding of failure to submit establishes a 2-year deadline for EPA to promulgate a federal implementation plan (FIP) to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states unless, prior to EPA promulgating a FIP, the state submits, and EPA approves, a SIP that meets these requirements.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0270. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov)

website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov) or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Notice and Comment under the Administrative Procedure Act (APA)**

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

## **I. Background and Overview**

### **A. Interstate Transport SIPs**

CAA section 110(a) imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. EPA refers to this type of SIP submission as the “infrastructure” SIP because it ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an “interstate transport SIP.” In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1) or interfere with maintenance of the NAAQS in any other state (prong 2). Interstate transport prongs 1 and 2, also called the “good neighbor” provisions, are the requirements relevant to this findings document.

Pursuant to CAA section 110(k)(1)(B), EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established per section 110(k)(1)(A). EPA refers to the determination that a state has not submitted a SIP that meets the minimum completeness criteria as a “finding of failure to submit.” If EPA finds a state has failed to submit a SIP to meet its statutory obligation to address 110(a)(2)(D)(i)(I), pursuant to section 110(c)(1) EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA

requirement. This finding therefore starts a 2-year clock for promulgation by EPA of a FIP, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and EPA approves, a submittal from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

#### **B. Finding of Failure to Submit for States that Did Not Submit a SIP**

On March 12, 2008, EPA strengthened the NAAQS for ozone. EPA revised the 8-hour primary ozone standard from 0.08 parts per millions (ppm) to 0.075 ppm. EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard, including the interstate transport requirements, were due March 12, 2011.

On December 27, 2012, Maryland submitted an infrastructure SIP for the 2008 ozone NAAQS. EPA determined the December 27, 2012 SIP submittal as complete on January 2, 2013. On May 2, 2014, EPA proposed approval of Maryland's infrastructure SIP submittal for the 2008 ozone NAAQS, but did not propose to take action on the portion of the submittal related to section 110(a)(2)(D)(i)(I), stating that EPA would take separate action on this part of the submittal. *See* 79 FR 25054.

On July 13, 2015, EPA published a rule finding that 24 states failed to submit complete SIPs that

addressed the “good neighbor” provision for the 2008 Ozone NAAQS. *See* 80 FR 39961 (July 13, 2015).<sup>1</sup> The finding action triggered a 2-year clock for the EPA to issue FIPs to address the “good neighbor” requirements for those states by August 12, 2017. Prior to issuance of the finding action, Maryland made a submission addressing the “good neighbor” provision for the 2008 ozone NAAQS on December 27, 2012, therefore, the state was not included in EPA’s July 2015 finding notice. Following Maryland’s submittal of its infrastructure SIP and EPA’s July 2015 finding notice, EPA proposed a rule on November 16, 2015<sup>2</sup> to address the “good neighbor” requirements for the 2008 ozone NAAQS. The rule proposed to promulgate FIPs in 23 eastern states, including Maryland, to reduce interstate ozone transport for the 2008 ozone NAAQS. EPA proposed to issue FIPs only for those states that either failed to submit a SIP or for which the EPA disapproved the state’s SIP addressing the “good neighbor” provision by the date the rule was finalized. EPA expects to finalize the rule and respective FIPs, as applicable, later this year.

On April 20, 2016, EPA received a letter, dated April 12, 2016,<sup>3</sup> from the Maryland Department of the Environment acknowledging that the transport component of the December 27, 2012 infrastructure SIP submittal needed to be updated with additional control measures and withdrawing from EPA’s consideration the section 110(a)(2)(D)(i)(I) portion of Maryland’s infrastructure SIP submittal dated December 27, 2012. The letter also states that Maryland plans to submit to EPA an updated good neighbor SIP in the future.

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<sup>1</sup> This finding is included in the docket for this action and available online at [www.regulations.gov](http://www.regulations.gov).

<sup>2</sup> See “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Proposed Rules,” 80 FR 75706 (December 3, 2015).

<sup>3</sup> Maryland’s April 12, 2012 letter inadvertently referred to an incorrect submittal date of December 31, 2012. The only infrastructure SIP submission from Maryland addressing section 110(a)(2) for the 2008 ozone NAAQS is the December 27, 2012 submittal.

## **II. Final Action**

With the withdrawal of the good neighbor portion of the December 27, 2012 infrastructure SIP submittal, Maryland has not submitted to EPA a SIP to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA is therefore finding that Maryland has failed to submit a complete good neighbor SIP to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. This finding starts a 2-year clock for promulgation by EPA of a FIP after the effective date of this final rule, in accordance with section 110(c)(1), unless prior to such promulgation that Maryland submits, and EPA approves, a submittal that meets the requirements of CAA section 110(a)(2)(D)(i)(I). This finding of failure to submit does not impose sanctions, and does not set deadlines for imposing sanctions as described in section 179, because it does not pertain to the elements of a CAA title I, part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5).

## **III. Statutory and Executive Order Reviews**

### **A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### **B. Paperwork Reduction Act (PRA)**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law.

### **C. Regulatory Flexibility Act (RFA)**

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

### **D. Unfunded Mandates Reform Act of 1995 (UMRA)**

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

### **E. Executive Order 13132: Federalism**

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### **F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of

promulgation of a new or revised NAAQS. Thus, Executive Order 13175 does not apply to this action.

**G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks**

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

**H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use**

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act**

This rulemaking does not involve technical standards.

**J. Congressional Review Act (CRA)**

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**K. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action finding that Maryland has failed to submit a CAA section 110(a)(2)(D)(I)(I) SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: July 8, 2016.

Shawn M. Garvin,  
Regional Administrator,  
Region III.

[FR Doc. 2016-17057 Filed: 7/19/2016 8:45 am; Publication Date: 7/20/2016]